

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 20, 1991, the Federal Trade Commission ("the Commission") issued final regulations (56 FR 11653) amending 16 CFR part 307, the Commission's existing regulations pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("the Smokeless Tobacco Act"). The amendments deleted the exemption of utilitarian objects from the regulations, and provided a method for displaying and rotating the health warnings on utilitarian objects. The amendments also changed the requirements for the rotation of the health warnings on point-of-sale and non-point-of-sale promotional materials ("promotional materials"). On January 15, 1993, the Commission deleted the promotional materials portion of the 1991 amendment, indicating that it had failed to receive sufficient comment on this portion of the Regulation. At the same time, the Commission re-proposed its 1991 rule for promotional materials warning label rotations and sought comment. Some of the comments received suggested that the Commission should not only amend the rotational schedule for promotional materials, but also amend the regulations governing the rotation of utilitarian objects. Thus, the Commission is seeking public comment on whether the regulations governing the rotation schedule for utilitarian objects should be amended.

All persons are hereby notified of the opportunity to submit written data, views, and arguments concerning the requirements for the rotation of health warnings on utilitarian objects.

DATES: Written comments will be accepted on or before April 17, 1995.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, (202) 326-2484, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

On January 15, 1993, the Commission proposed amending 16 CFR part 307 (58 FR 4874) to modify the rotational schedule for health warnings on promotional materials. Some of the comments received suggested that the Commission should not only amend the rotational provisions for promotional materials, but also amend the regulations governing the rotation of utilitarian objects.

The proposed rule would provide that a satisfactory plan for utilitarian objects could provide for rotation according to either the date the object is disseminated or the date the object is ordered. It would also delete the exception permitting random rotation under certain circumstances. This exception was intended to alleviate the hardship caused when date of dissemination was specified as the only acceptable basis for a rotation schedule. The Commission currently permits rotation methods based on dissemination date or order date for promotional materials. See 58 FR 4874 (Jan. 15, 1993). The proposed rule for utilitarian items follows the rotation method currently in effect for promotional materials. However, the proposed rule would permit rotation based on dissemination date or order date only if the production of materials is carried out in a manner consistent with customary business practices. Thus, under the proposed rule, there would no longer be any need for random rotation. For these reasons, the Commission is proposing the deletion of the random rotation exception from the regulations.

Section B—Questions

In particular, the Commission is soliciting information on the following questions:

Question 1. What is the likely effect of the proposed requirements for the

rotation of health warnings or utilitarian objects on the costs, profitability, competitiveness, and employment of small business entities?

Question 2. The Smokeless Tobacco Act requires smokeless tobacco companies to submit plans to the Commission that specify the method the companies will use to rotate, display, and distribute the required health warning statements on their packaging and advertising. The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3084-0082.

By changing the requirements for the rotation of the health warnings on utilitarian objects, the proposed amendments will require some of the smokeless tobacco companies to revise their rotational plans for utilitarian objects. What are the possible paperwork burdens that the proposed utilitarian objects amendment to 16 CFR Part 307 may impose?

Question 3. What are the possible regulatory alternatives that would reduce the economic impact of the proposed rotational requirements for warning labels on utilitarian objects, yet fully implement the regulatory mandate of the Smokeless Tobacco Act?

Section C—Regulatory Flexibility Act

When the Smokeless Tobacco Regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 24378 (1986). The Commission has re-examined that issue with respect to the proposed amendment for utilitarian objects and has preliminarily determined that the proposed amendment will not change that determination because the amendment merely enables manufacturers of smokeless tobacco to modify slightly an already existing schedule by which they rotate the three required warnings on utilitarian objects. In order to ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability,

competitiveness, and employment of small entities.

Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b) (1982). This notice serves as certification to that effect for the purposes of the Small Business Administration.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, it is proposed that part 307 of 16 CFR be amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.12 is amended by revising paragraph (b) to read as follows:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

[b] Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every 4 months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each 4-month period or require each brand to display a different warning during a given 4-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each 4-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation

according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials each as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-3536 Filed 2-13-95; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") proposes to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "the Act"). Section 3 of the Act directs the FTC to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

DATES: Written comments must be submitted on or before March 31, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

Following the period for written comments, Commission staff plan to conduct a Public Workshop Conference to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period. Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before March 6, 1995. A list of affected interests appears in Section D of the Supplementary Information section.

The Public Workshop-Conference will be held in Chicago, Illinois on April 18 through 20, 1995, from 9 a.m. until 5 p.m. each day.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Submissions should be captioned: "Proposed Telemarketing Sales Rule," FTC File No. R411001.

Notification of interest in the Public Workshop-Conference should be submitted in writing to Carole Danielson, Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

The Public Workshop-Conference will be held in Chicago, Illinois, at the Chicago Hilton Hotel, 720 South Michigan Avenue, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326-3140, or Judith M. Nixon, (202) 326-3173, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, the President signed into law the Telemarketing Act, Public Law No. 103-297. In enacting the Telemarketing Act, Congress made the following findings, set forth in section 2 of the Act:¹

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose \$40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

¹ 15 U.S.C. 6101.